

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THE LAMAR COMPANY, LLC,
Plaintiff,

v.

CONTINENTAL CASUALTY COMPANY,
a member of CNA Insurance
Companies, and MICHAEL H.
RUNYAN,
Defendants.

No. CV-05-0320-FVS

ORDER DENYING MOTION
WITHOUT PREJUDICE

THIS MATTER came before the Court on the Court's review of this stayed action. Plaintiff is represented by Eugene I. Annis, Mark D. Mese, Todd A. Rossi, and Trevor R. Pincock. Defendant Michael H. Runyan is represented by David R. East and Robert M. Sulkin. Defendant Continental Casualty Company is represented by Carl E. Forsberg and Patrick S. Brady.

BACKGROUND

In the matter of *Kootenai Electric Cooperative, Inc. v. The Lamar Corporation*, CV-02-08891, filed in Kootenai County District Court in Idaho, Kootenai Electric Cooperative, Inc. ("KEC") sought a judgment against Lamar for \$9,965,752, representing the amount of the verdict against KEC rendered in the Kuntz Lawsuit tried before the Honorable Robert H. Whaley, CV-00-0415-RHW, in the federal district court for the Eastern District of Washington. KEC and Lamar were co-defendants in the Kuntz Lawsuit. On November 15, 2006, the Kootenai County District Court granted summary judgment to Lamar on the basis of *res judicata*, finding that KEC should have asserted its claim for

1 indemnification in the Kuntz Lawsuit. That summary judgment order has
2 been appealed by KEC to the Idaho appellate courts. In light of that
3 appeal, Judge McDonald stayed the proceedings in this lawsuit pending
4 resolution of the appeal in the Idaho courts. (Ct. Rec. 86). The
5 instant action was reassigned to the undersigned on August 1, 2007.
6 (Ct. Rec. 87).

7 **RULING**

8 While KEC filed its appellate brief with the Idaho Supreme Court
9 on May 25, 2007, and the matter is now fully briefed in that court, a
10 decision on the appeal in *Kootenai Electric Cooperative, Inc. v. The*
11 *Lamar Corporation* has yet to be rendered. (Ct. Rec. 93). In the mean
12 time, Defendant Runyan's July 10, 2006 motion for summary judgment
13 remains pending before this Court. (Ct. Rec. 48). Given the length
14 of time this case has been pending and the fact that Mr. Runyan's
15 motion could be rendered meaningless by an affirmance of the matter on
16 appeal, the Court finds that the pending motion (**Ct. Rec. 48**) shall be
17 **DENIED WITHOUT PREJUDICE TO ITS RENOTICE**. If the decision on appeal
18 does not render the motion for summary judgment moot, Defendant Runyan
19 may renote the motion for hearing following a removal of the stay in
20 this matter.

21 **IT IS SO ORDERED.** The District Court Executive is hereby
22 directed to enter this order and furnish copies to counsel.

23 **DATED** this 4th day of February, 2009.

24 S/Fred Van Sickle
25 Fred Van Sickle
26 Senior United States District Judge